

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6355 of 1999

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

DHIRUBHAI MADHABHAI SOLANKI

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

MS TALATI AGP for Respondent No. 1, 2, 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 18/02/2000

ORAL JUDGEMENT

Heard the learned advocates. The petitioner challenges the order of preventive detention dated 24th June, 1999, made by the Commissioner of Police, Rajkot City, in exercise of powers conferred upon him by section 3 (1) of the Gujarat Prevention of Anti Social Activities

Act, 1985 (hereinafter referred to as 'the Act').

Along with the order of detention, the petitioner has been served with the grounds of detention and the supporting materials. The grounds of detention refer to four prohibition cases registered against the petitioner during the months of November 1997 to February 1999. In each of the cases, country liquor was recovered from the petitioner, and in three of the latter offences, even the liquor-wash was recovered from the petitioner.

It is contended that the last of the offences was registered against the petitioner on 28th February, 1999, and the petitioner was soon arrested. The petitioner was ordered to be released on bail on 1st March, 1999. However, the impugned order has not been made till 24th June, 1999 i.e. more than four months from the date of the offence. Besides, there is no live link with the cause of action and the impugned order. The order of preventive detention is, therefore, unwarranted and the power has been exercised without the authority of law. It is further contended that amongst the materials relied upon by the Detaining Authority and furnished to the petitioner, two documents viz. bail orders are illegible. Thereby the petitioner has been deprived of his right to make an effective representation. The continued detention of the petitioner thus being violative of Article 22 (5) of the Constitution of India, is illegal, null and void. It is also contended that the representation made by the petitioner was received by the State Government on 27th July, 1999, and has been rejected on the same day. It only indicates the non-application of mind which too should vitiate the continued detention of the petitioner.

The averments made in the petition are not controverted. In absence of the contest, the contentions raised have to be accepted.

Petition is, therefore, allowed. The impugned order of preventive detention is quashed and set aside. The petitioner, unless is required to be detained in some other case, be released forthwith. Rule is made absolute accordingly. There shall be no order as to costs.

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